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DEPARTMENT FOR ENVIRONMENTAL PROTECTION

ANTHONY R. HATTON
COMMISSIONER

300 SOWER BOULEVARD
FRANKFORT, KENTUCKY 40601

February 28, 2020

Nick Rodgers
Executive Director
Kentucky Crushed Stone Association

Re: Response to Public Comments
KPDES No.: KYG840000
General Permit for Mineral Mining and On-Site
Processing Activities
AI No.: 35050

Dear Mr. Rodgers;

Your comments concerning the above-referenced draft permit have been reviewed and responses prepared in accordance with Kentucky Pollutant Discharge Elimination System (KPDES) regulation 401 KAR 5:075, Section 12. The comments have been briefly described below and our responses to those comments follow:

COMMENT 1: The Definition of NODI Code 2 in the current permit is "Operation Shutdown" with the description "This code is to be used when the operation has been shut down". The definition of NODI Code 2 in the draft permit has been changed to "Operation Shutdown/Outfall Removed", with a description that is substantially changed from the current permit. We have conducted a concerted review of EPA files to discover the source of the new wording as it relates to the description of NODI Code 2 on page 15 of the draft with no success. The only definition or description we have discovered in EPA files for NODI Code 2 is "Operation Shutdown".

We respectfully request the Division of Water to provide a citation for the revised description on page 15 of the draft?

If a citation is not provided, we request that the NODI Code 2 definition and follow-up description found in the current permit be used in the draft permit?

RESPONSE 1: DOW appreciates the comment and believes NODI Code 2 is appropriately used as described above. With the draft permit, this NODI Code has been defined for clarity as to the intended meaning. Per 40 CFR 122.1(b) "The NPDES program requires permits for the discharge of "pollutants" from any "point source" into "waters of the United States"." Point source is defined in 40 CFR 122.2 as "any discernible, confined, and discrete conveyance... from which pollutants are or may be discharged." The requirement to sample is not based upon the current activity, but on the stormwater exposure to potential pollutants discharging from a point source.

The Effluent Limitations address the discharge of pollutants in Section 2.1 of the permit.

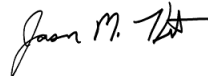
COMMENT 2: One reason for using NODI Code 2 in the draft permit is that a pond or outfall has been physically removed from a site. This seems to be counter-intuitive. Should a permittee remove a pond or outfall from a site, that permittee would simply revise or cancel the KPDES permit with the resulting elimination of a Discharge Monitoring Report (DMR) for that outfall. Accordingly, there would be no DMR upon which to enter a NODI Code of 2. We request that references to "Outfall Removed" be deleted from the definition on page 14 and the follow-up description on page 15 of the draft permit?

RESPONSE 2: DOW appreciates the comment. To include the option of using NODI Code 2 for “Outfall Removed” is a tool for the permittee to report that the outfall is no longer required per DNR and it has been physically removed, and can be used until the time that DOW issues the permit modification.

Any demand for a hearing on the permit shall be filed in accordance with the procedures specified in KRS 224.10-420, 224.10-440, 224.10-470 and any regulations promulgated thereto. Any person aggrieved by the issuance of a permit final decision may demand a hearing, pursuant to KRS 224.10-420(2), within thirty (30) days from the date of the issuance of this letter. Two (2) copies of request for hearing should be submitted in writing to the Energy and Environment Cabinet, Office of Administrative Hearings, 211 Sower Boulevard, Frankfort, Kentucky 40601 and the Commonwealth of Kentucky, Energy and Environment Cabinet, Division of Water, 300 Sower Boulevard, Frankfort, Kentucky 40601. For your record keeping purposes, it is recommended that these requests be sent by certified mail. The written request must conform to the appropriate statutes referenced above.

If you have any questions regarding the KPDES decision, please contact the Surface Water Permits Branch by phone at (502) 564-3410 or via email at SWPBSupport@ky.gov. Further information on procedures and legal matters pertaining to the hearing request may be obtained by contacting the Office of Administrative Hearings at (502) 564-7312.

Sincerely,



Paul Miller, P.E.
Director, Division of Water

PM: JMH: asw
Enclosure